

ASSEMBLY BILL

No. 2371

Introduced by Assembly Member Lempert

February 24, 2000

An act to amend Sections 1203.1d and 1214 of the Penal Code, and to amend Sections 19280 and 19282 of, and to repeal Section 19283 of, the Revenue and Taxation Code, relating to fines.

LEGISLATIVE COUNSEL'S DIGEST

AB 2371, as introduced, Lempert. Fines.

(1) Existing law permits, until January 2002, the referral of fines, state or local penalties, forfeitures, restitution fines, or restitution orders imposed by specified courts upon a person for criminal offenses under certain conditions to the Franchise Tax Board for collection. Existing law authorizes a board of supervisors to establish priorities of payment with respect to amounts collected by the Franchise Tax Board. Existing law specifies that fines no less than \$250 may be referred to the board.

This bill would extend that authority indefinitely. This bill would instead require a board of supervisors to establish those priorities of payment, thereby imposing a state-mandated local program. This bill would provide that restitution fines and restitution orders no less than \$100 may be referred to the Franchise Tax Board for collection.

(2) Existing law provides that any judgment for a fine, including a restitution fine, may be enforced in the manner provided for the enforcement of money judgments generally.

This bill would provide that any portion of a restitution fine that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the State Board of Control or any other entity responsible for its collection, as specified. This bill would also provide that, for the collection of restitution fines on behalf of the State Board of Control, the administrative costs shall be determined through contractual agreement between the Franchise Tax Board and the State Board of Control.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.1d of the Penal Code is
2 amended to read:
3 1203.1d. In determining the amount and manner of
4 disbursement under an order made pursuant to this code
5 requiring a defendant to make reparation or restitution
6 to a victim of a crime, to pay any money as
7 reimbursement for legal assistance provided by the court,
8 to pay any cost of probation or probation investigation, to
9 pay any cost of jail or other confinement, or to pay any
10 other reimbursable costs, the court, after determining the
11 amount of any fine and penalty assessments, and a county
12 financial evaluation officer when making a financial
13 evaluation, shall first determine the amount of restitution



1 to be ordered paid to any victim, and shall then
2 determine the amount of the other reimbursable costs.

3 If payment is made in full, the payment shall be
4 apportioned and disbursed in the amounts ordered by the
5 court.

6 If reasonable and compatible with the defendant's
7 financial ability, the court may order payments to be
8 made in installments.

9 With respect to installment payments and amounts
10 collected by the Franchise Tax Board pursuant to Section
11 19280 of the Revenue and Taxation Code, the board of
12 supervisors ~~may~~ *shall* establish the priorities of payment,
13 first between fines, penalty assessments, and reparation
14 or restitution, and then between other reimbursable
15 costs. The board of supervisors may ~~also~~ establish
16 priorities of payment between orders or parts of orders in
17 cases where defendants have been ordered to pay more
18 than one court order.

19 Documentary evidence, such as bills, receipts, repair
20 estimates, insurance payment statements, payroll stubs,
21 business records, and similar documents relevant to the
22 value of the stolen or damaged property, medical
23 expenses, and wages and profits lost shall not be excluded
24 as hearsay evidence.

25 SEC. 2. Section 1214 of the Penal Code is amended to
26 read:

27 1214. (a) If the judgment is for a fine, including a
28 restitution fine ordered pursuant to Section 1202.4 or
29 Section 1203.04 as operative on or before August 2, 1995,
30 or Section 13967 of the Government Code, as operative on
31 or before September 28, 1994, with or without
32 imprisonment, the judgment may be enforced in the
33 manner provided for the enforcement of money
34 judgments generally. *Any portion of a restitution fine that*
35 *remains unsatisfied after a defendant is no longer on*
36 *probation or parole is enforceable by the State Board of*
37 *Control, or any other entity responsible for its collection,*
38 *pursuant to this section. Notwithstanding any other*
39 *provision of law prohibiting disclosure, the state, as*
40 *defined in Section 900.6 of the Government Code, a local*

1 *public entity, as defined in Section 900.4 of the*
2 *Government Code, or any other entity, shall provide the*
3 *State Board of Control, upon request, any and all*
4 *information to assist in the collection of unpaid portions*
5 *of a restitution fine for terminated probation or parole*
6 *cases.*

7 (b) In any case in which a defendant is ordered to pay
8 restitution, the order to pay restitution (1) is deemed a
9 money judgment if the defendant was informed of his or
10 her right to have a judicial determination of the amount
11 and was provided with a hearing, waived a hearing, or
12 stipulated to the amount of the restitution ordered, and
13 (2) shall be fully enforceable by a victim as if the
14 restitution order were a civil judgment, and enforceable
15 in the same manner as is provided for the enforcement of
16 any other money judgment. Upon the victim's request,
17 the court shall provide the victim in whose favor the
18 order of restitution is entered with a certified copy of that
19 order and a copy of the defendant's disclosure pursuant
20 to paragraph (4) of subdivision (f) of Section 1202.4, ~~or~~
21 affidavit or information pursuant to paragraph (5) of
22 subdivision (f) of Section 1202.4, or report pursuant to
23 paragraph (7) of subdivision (f) of Section 1202.4. The
24 court also shall provide this information to the district
25 attorney upon request in connection with an
26 investigation or prosecution involving perjury or the
27 veracity of the information contained within the
28 defendant's financial disclosure. In addition, upon
29 request, the court shall provide the State Board of Control
30 with a certified copy of any order imposing a restitution
31 fine or order and a copy of the defendant's disclosure
32 pursuant to paragraph (4) of subdivision (f) of Section
33 1202.4, ~~or~~ affidavit or information pursuant to paragraph
34 (5) of subdivision (f) of Section 1202.4, or report pursuant
35 to paragraph (7) of subdivision (f) of Section 1202.4. A
36 victim shall have access to all resources available under
37 the law to enforce the restitution order, including, but not
38 limited to, access to the defendant's financial records, use
39 of wage garnishment and lien procedures, information
40 regarding the defendant's assets, and the ability to apply

1 for restitution from any fund established for the purpose
2 of compensating victims in civil cases. Any portion of a
3 restitution order that remains unsatisfied after a
4 defendant is no longer on probation or parole is
5 enforceable by the victim pursuant to this section.
6 Victims and the State Board of Control shall inform the
7 court whenever an order to pay restitution is satisfied.

8 (c) Except as provided in subdivision (d), and
9 notwithstanding the amount in controversy limitation of
10 Section 85 of the Code of Civil Procedure, a restitution
11 order or restitution fine that was imposed pursuant to
12 Section 1202.4 by a municipal court, or by the superior
13 court acting pursuant to subdivision (d) of Section 1462,
14 may be enforced in the same manner as a money
15 judgment in a limited civil case.

16 (d) Chapter 3 (commencing with Section 683.010) of
17 Division 1 of Title 9 of Part 2 of the Code of Civil
18 Procedure shall not apply to a judgment for any fine or
19 restitution ordered pursuant to Section 1202.4 or Section
20 1203.04 as operative on or before August 2, 1995, or
21 Section 13967 of the Government Code, as operative on
22 or before September 28, 1994.

23 (e) (1) This section shall become operative on
24 January 1, 2000, and shall be applicable to all courts,
25 except when all of the following apply:

26 (A) A majority of judges of a court apply to the Judicial
27 Council for an extension.

28 (B) The judicial application described in paragraph
29 (1) documents the need for time to adjust restitution
30 procedures and practices, as well as to facilitate judicial
31 education and training in direct restitution to victims
32 under subdivision (f) of Section 1202.4.

33 (C) The Judicial Council grants the extension upon
34 finding good cause.

35 (2) Upon the grant of an extension pursuant to the
36 application of a court under this subdivision, the
37 provisions of former Section 1202.4 shall continue to apply
38 with respect to that court. The extension may be for any
39 period of time set by the Judicial Council, but shall not
40 exceed January 1, 2002, in any case.

1 SEC. 3. Section 19280 of the Revenue and Taxation
2 Code is amended to read:

3 19280. (a) (1) Fines, state or local penalties,
4 forfeitures, ~~restitution fines, restitution orders,~~ or any
5 other amounts imposed by a superior or municipal court
6 of the State of California upon a person or any other entity
7 that is due and payable in an amount totaling no less than
8 two hundred fifty dollars (\$250), in the aggregate, for
9 criminal offenses, including all offenses involving a
10 violation of the Vehicle Code, except offenses relating to
11 parking or registration or offenses by pedestrians or
12 bicyclists, may, no sooner than 90 days after payment of
13 that amount becomes delinquent, be referred by the
14 county or the state to the Franchise Tax Board for
15 collection under guidelines prescribed by the Franchise
16 Tax Board.

17 (2) *Restitution fines and restitution orders imposed by*
18 *a superior or municipal court of the State of California*
19 *upon a person or any other entity that is due and payable*
20 *in an amount totaling no less than one hundred dollars*
21 *(\$100), in the aggregate, for criminal offenses, including*
22 *all offenses involving a violation of the Vehicle Code,*
23 *except offenses relating to parking or registration or*
24 *offenses by pedestrians or bicyclists, may, no sooner than*
25 *90 days after payment of that amount becomes*
26 *delinquent, be referred by the county or the state to the*
27 *Franchise Tax Board for collection under guidelines*
28 *prescribed by the Franchise Tax Board.*

29 (3) For purposes of this subdivision:

30 (A) The amounts referred by the county or state
31 under this section may include any amounts that a
32 government entity may add to the court-imposed
33 obligation as a result of the underlying offense, trial, or
34 conviction. For purposes of this article, those amounts
35 shall be deemed to be imposed by the court.

36 (B) Restitution orders may be referred to the
37 Franchise Tax Board only by a government entity, as
38 agreed upon by the Franchise Tax Board, provided that
39 all of the following apply:

1 (i) The government entity has the authority to collect
2 on behalf of the state or the victim.

3 (ii) The government entity shall be responsible for
4 distributing the restitution order collections, as
5 appropriate.

6 (iii) The government entity shall ensure, in making
7 the referrals and distributions, that it coordinates with
8 any other related collection activities that may occur by
9 counties or other state agencies.

10 (iv) The government entity shall ensure compliance
11 with laws relating to the reimbursement of the State
12 Restitution Fund.

13 (C) The Franchise Tax Board shall establish criteria
14 for referral, which shall include setting forth a minimum
15 dollar amount subject to referral and collection.

16 (b) For the period January 1, 1995, to December 31,
17 1997, inclusive, for purposes of a manageable
18 implementation and evaluation of the program
19 authorized by this article, the Franchise Tax Board may
20 limit referrals to nine counties.

21 (c) Upon written notice to the obligor from the
22 Franchise Tax Board, any amount referred to the
23 Franchise Tax Board under subdivision (a) and any
24 interest thereon, including any interest on the amount
25 referred under subdivision (a) that accrued prior to the
26 date of referral, shall be treated as final and due and
27 payable to the State of California, and shall be collected
28 from the obligor by the Franchise Tax Board in any
29 manner authorized under the law for collection of a
30 delinquent personal income tax liability, including, but
31 not limited to, issuance of an order and levy under Article
32 4 (commencing with Section 706.070) of Chapter 5 of
33 Division 2 of Title 9 of Part 2 of the Code of Civil
34 Procedure in the manner provided for earnings
35 withholding orders for taxes.

36 (d) (1) Part 10 (commencing with Section 17001),
37 this part, Part 10.7 (commencing with Section 21001), and
38 Part 11 (commencing with Section 23001) shall apply to
39 amounts referred under this article in the same manner
40 and with the same force and effect and to the full extent

1 as if the language of those laws had been incorporated in
2 full into this article, except to the extent that any
3 provision is either inconsistent with this article or is not
4 relevant to this article.

5 (2) Any information, information sources, or
6 enforcement remedies and capabilities available to the
7 court or the state referring to the amount due described
8 in subdivision (a), shall be available to the Franchise Tax
9 Board to be used in conjunction with, or independent of,
10 the information, information sources, or remedies and
11 capabilities available to the Franchise Tax Board for
12 purposes of administering Part 10 (commencing with
13 Section 17001), this part, Part 10.7 (commencing with
14 Section 21001), or Part 11 (commencing with Section
15 23001).

16 (e) The activities required to implement and
17 administer this part shall not interfere with the primary
18 mission of the Franchise Tax Board to administer Part 10
19 (commencing with Section 17001) and Part 11
20 (commencing with Section 23001).

21 (f) For amounts referred for collection under
22 subdivision (a), interest shall accrue at the greater of the
23 rate applicable to the amount due being collected or the
24 rate provided under Section 19521. When notice of the
25 amount due includes interest and is mailed to the obligor
26 and the amount is paid within 15 days after the date of
27 notice, interest shall not be imposed for the period after
28 the date of notice.

29 (g) In no event shall a collection under this article be
30 construed as a payment of income taxes imposed under
31 Part 10 (commencing with Section 17001) or Part 11
32 (commencing with Section 23001).

33 SEC. 4. Section 19282 of the Revenue and Taxation
34 Code is amended to read:

35 19282. (a) Except as otherwise provided in
36 subdivision (e), amounts collected under this article shall
37 be transmitted to the Treasurer and deposited in the
38 State Treasury to the credit of the Court Collection
39 Account in the General Fund, which is hereby created.
40 Amounts deposited in the Court Collection Account shall,

1 less an amount that is equal to the costs incurred by the
 2 Franchise Tax Board in administering the program
 3 authorized by this article, be transferred by the
 4 Controller either to the county or to the state fund to
 5 which the amount due was originally owing or as
 6 otherwise directed by contractual agreement. If the
 7 amount collected is not sufficient to satisfy the amounts
 8 referred for collection pursuant to Section 19280 that are
 9 to be paid by an offender, then the amount paid shall be
 10 allocated for distribution on a pro rata basis, as defined in
 11 subdivision (d), except in counties where the board of
 12 supervisors has established a priority of payment for
 13 amounts collected under this article pursuant to Section
 14 1203.1d of the Penal Code. The amount that is equal to the
 15 costs incurred by the Franchise Tax Board in
 16 administering the program authorized by this article shall
 17 be transferred by the Controller to the General Fund for
 18 the purpose of recovering the amount expended by the
 19 Franchise Tax Board from General Fund appropriations
 20 for the purpose of implementing and administering the
 21 program authorized by this article, and related statutes as
 22 added or amended by the act adding this article.

23 (b) It is the intent of the Legislature that costs to the
 24 Franchise Tax Board to administer this article for the
 25 1997–98 fiscal year and each fiscal year thereafter not
 26 exceed 15 percent of the amount it collects pursuant to
 27 this article. *For the collection of restitution fines on behalf*
 28 *of the State Board of Control, the administrative costs*
 29 *shall be determined through contractual agreement*
 30 *between the Franchise Tax Board and the State Board of*
 31 *Control.*

32 (c) Notwithstanding Section 13340 of the Government
 33 Code, all moneys deposited in the Court Collection
 34 Account pursuant to this section are hereby continuously
 35 appropriated, without regard to fiscal years, for purposes
 36 of making distributions pursuant to subdivision (a).

37 (d) For purposes of this section, “pro rata basis” means
 38 a distribution determined as follows: the sum of the
 39 amounts referred for collection pursuant to Section 19280
 40 to be paid by an offender shall be allocated and

1 distributed in the same proportion that each of the
2 elements has to the sum.

3 (e) For amounts collected pursuant to a restitution
4 fine or restitution order, subdivision (a) is modified ~~to~~ as
5 follows:

6 *(1) Amounts deposited in the Court Collection*
7 *Account from the collection of restitution fines shall, less*
8 *an amount that is equal to the costs incurred by the*
9 *Franchise Tax Board in administering the program*
10 *authorized by this article, be transferred by the*
11 *Controller to the State Board of Control for deposit into*
12 *the Restitution Fund. If the amount collected is not*
13 *sufficient to satisfy both the restitution fine and any other*
14 *amounts referred for collection pursuant to Section 19280*
15 *that are to be paid by an offender, then the amount paid*
16 *shall be allocated for distribution on a pro rata basis, as*
17 *defined in subdivision (d), between the State Board of*
18 *Control and the fund or funds to which the other amounts*
19 *are due under the provisions of subdivision (a).*

20 *(2) To require the deposit and disbursement of funds*
21 *collected under this article to be in accordance with the*
22 *laws relating to reimbursement of the State Restitution*
23 *Fund.*

24 SEC. 5. Section 19283 of the Revenue and Taxation
25 Code is repealed.

26 ~~19283. This article shall remain in effect only until~~
27 ~~January 1, 2002, and as of that date is repealed, unless a~~
28 ~~later enacted statute, which is enacted before January 1,~~
29 ~~2002, deletes or extends this date.~~

30 SEC. 6. Notwithstanding Section 17610 of the
31 Government Code, if the Commission on State Mandates
32 determines that this act contains costs mandated by the
33 state, reimbursement to local agencies and school
34 districts for those costs shall be made pursuant to Part 7
35 (commencing with Section 17500) of Division 4 of Title
36 2 of the Government Code. If the statewide cost of the
37 claim for reimbursement does not exceed one million

1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.

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